



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF M-M-A-, INC.

DATE: FEB. 9, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a fashion/beauty artist agency, seeks to employ the Beneficiary permanently in the United States as a design director. *See* Section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Director, Nebraska Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1). As required by statute, the petition is accompanied by ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The priority date of the petition is April 14, 2014. *See* 8 C.F.R. § 204.5(d). The Director determined that the Petitioner had not established that the Beneficiary met the minimum requirements of the labor certification. The Director denied the petition accordingly.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>1</sup>

The petitioner must establish that the beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

Part H of the labor certification states that the offered position has the following minimum requirements:

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<sup>1</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1).

(b)(6)

*Matter of M-M-A-, Inc.*

- H.4. Education: Bachelor's degree in graphic design/art/related design field.
- H.5. Training: None required.
- H.6. Experience in the job offered: 60 months.
- H.7. Alternate field of study: graphic design/art/related design field.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: 60 months of experience as a graphic designer or related creative design occupation.
- H.14. Specific skills or other requirements: The employer will accept any suitable combination of education, training or experience consistent with H4 to H10 above.

Part J of the labor certification states that the Beneficiary possesses a bachelor's degree in political science from the [REDACTED] Canada, completed in 2001. The record contains a copy of the Beneficiary's Bachelor of Arts Honors Political Science diploma and transcripts from the [REDACTED] Canada, issued on October 26, 2001.

The record contains an evaluation of the Beneficiary's educational credentials prepared by [REDACTED] on June 5, 2013.<sup>2</sup> It states that the Beneficiary's bachelor's degree in political science is equivalent to a bachelor's degree in political science from a regionally accredited institution of higher learning in the United States.

The record contains an evaluation of the Beneficiary's educational credentials prepared by [REDACTED] on May 21, 2013. It states that the Beneficiary's bachelor's degree in political science is equivalent to a bachelor's degree in political science awarded by a regionally accredited university in the United States.

The record contains an evaluation of the Beneficiary's educational credentials prepared by [REDACTED] for [REDACTED] on March 27, 2015. It states that the Beneficiary's bachelor's degree is equivalent to a bachelor of arts degree from a regionally accredited college or university in the United States.

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<sup>2</sup> U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

We have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is “a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world.” See <http://www.aacrao.org/About-AACRAO.aspx>. Its mission “is to serve and advance higher education by providing leadership in academic and enrollment services.” *Id.* EDGE is “a web-based resource for the evaluation of foreign educational credentials.” See <http://edge.aacrao.org/info.php>. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.<sup>3</sup>

According to EDGE, an Honours Bachelor’s degree from [REDACTED] Canada, is comparable to “a bachelor’s degree in the United States.”

In evaluating the beneficiary’s qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). USCIS must examine “the language of the labor certification job requirements” in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. USCIS interprets the meaning of terms used to describe the requirements of a job in a labor certification by “examin[ing] the certified job offer *exactly* as it is completed by the prospective employer.” *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS’s interpretation of the job’s requirements, as stated on the labor certification must involve “reading and applying *the plain language* of the [labor certification]” even if the employer may have intended different requirements than those stated on the form. *Id.* at 834 (emphasis added).

In the instant case, the labor certification states that the offered position requires a bachelor’s degree in graphic design, art, or a related design field, and 60 months (five years) of experience in the proffered position or as a graphic designer or related creative design occupation. No additional alternate fields of study are accepted.

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<sup>3</sup> In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that we provided a rational explanation for our reliance on information provided by AACRAO to support our decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien’s three-year foreign “baccalaureate” and foreign “Master’s” degrees were only comparable to a U.S. bachelor’s degree. In *Sunshine Rehab Services, Inc. v. USCIS*, 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien’s three-year bachelor’s degree was not a foreign equivalent degree to a U.S. bachelor’s degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

(b)(6)

*Matter of M-M-A-, Inc.*

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

- (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i).

Therefore, an advanced degree professional petition must establish that the beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree. Further, an “advanced degree” is a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, *or* a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty.

In the instant case, the Petitioner claims that the Beneficiary may be classified as an advanced degree professional based on a foreign equivalent degree to a U.S. bachelor’s followed by at least five years of progressive experience in the specialty.

Evidence relating to qualifying experience must be in the form of a letter from a current or former employer and must include the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary. 8 C.F.R. § 204.5(g)(1). If such evidence is unavailable, USCIS may consider other documentation relating to the beneficiary’s experience. *Id.*

While the record contains sufficient evidence that the Beneficiary holds at least five years of progressive experience in the specialty, the Petitioner has not established that the Beneficiary has a United States baccalaureate degree or a foreign equivalent degree in graphic design, art, or a related design field. As stated above, the record contains a [REDACTED] Honors bachelor’s degree reflecting that the Beneficiary was issued a bachelor’s degree in political science.

According to the [REDACTED] description of its introductory course to political science, “[t]he course focuses on ideas (including politics, power, democracy, justice, freedom), ideologies (including liberalism, conservatism, socialism, feminism), institutions (including the nation-state, constitutions, legislatures, executives, the judiciary), political mobilization (participation, elections, parties, interest groups), and research skills, emphasizing Canadian, comparative, and international examples.” *See* [REDACTED] (accessed February 1, 2016).

On appeal, the Petitioner asserts that the field of honors is not necessarily the primary field of study, but indicates a requirement that a student achieve high marks in the honors field. However, in reviewing the Beneficiary's transcripts, the Beneficiary's courses did not entail any graphic design, art, or design related fields of study. The Beneficiary's transcripts list coursework in economics, business, politics, language, international relations, government, and psychology. None of the Beneficiary's coursework involved art, design or graphic design. We therefore do not find that the Beneficiary's Bachelor of Arts Honors Political Science meets the field of study requirements of the labor certification.

Although not a basis for this decision, we note that the Petitioner did not establish its ability to pay the proffered wage. The petitioner must demonstrate its continuing ability to pay the proffered wage from the priority date and continuing until the beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay "shall be in the form of copies of annual reports, federal tax returns, or audited financial statements." *Id.*

The record contains the Petitioner's federal tax returns for 2013. With any future filings, the Petitioner must submit its annual reports, federal tax returns, or audited financial statements for 2014 and 2015.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of M-M-A-, Inc.*, ID# 15718 (AAO Feb. 9, 2016)